IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.992 of 2003

Reserved on 3.10.2007

Date of decision 10.10.2007

Smt.Subhadra Devi and ors. Petitioners

Vs.

State of H.P. and anr. Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No

For the Petitioners: Mr.Ajay Sharma, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan,Dy.A.G., for respondent No.1.

Mr.Virender Singh Kanwar, Advocate, for respondent No.2.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that Sh.Shambhu Dutt, predecessor-in-interest of respondent No.2 preferred an application for the correction of revenue entries before the Settlement Officer, Kangra. The application was rejected by the Tehsildar (Settlement) on 23.2.1988. The Settlement Collector Kangra accepted the appeal vide order dated 22.1.1991 and set aside the order of Tehsildar (Settlement), Amb dated 23.2.1988 and remanded the case to the Tehsildar (Settlement)-cum- A.C.Ist Grade, Amb for a fresh demarcation on the spot and then send a proposal for correction to the Settlement

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[1] Whether reporter of local papers are allowed to see the judgment ? No

Collector. The Tehsildar (Settlement)-cum- A.C.Ist Grade, Amb rejected the application on 31.1.1992. The respondent No.2 filed an appeal before the Settlement Collector, Kangra, who rejected the same vide order dated 18.6.1993. Thereafter the respondent No.2 filed a revision before the Divisional Commissioner, Kangra who rejected the same on 15.1.1998. The respondent No.2 thereafter filed a revision petition under Section 17 of the H.P. Land Revenue Act, 1953 against the order dated 15.1.1998 passed by the Divisional Commissioner, Kangra Division before the Financial Commissioner (Appeals). The same was accepted by the Financial Commissioner (Appeals) on 8.10.2003.

Mr. Ajay Sharma, learned counsel appearing for the petitioner had strenuously argued that the order dated 8.10.2003 passed by the Financial Commissioner(Appeals) is not sustainable in the eyes of law and had supported the orders passed by the authorities which were upheld by the Divisional Commissioner, Kangra vide order dated 15.1.1998. The learned Advocate General and Mr.Virender Singh Kanwar, learned counsel appearing for the respondents had supported the order dated 8.10.2003 of the Financial Commissioner (Appeals).

I have heard the learned counsel for the parties and have gone through the record of the case.

Mr. Ajay Sharma had drawn the attention of the Court to the statement of respondent No.2 recorded on 14.7.1991 by the Naib Tehsildar (A.C.2nd Grade) during the spot inspection whereby he has shown his desire to compromise the matter. The Tehsildar (Settlement)-cum- A.C.Ist Grade, Amb while rejecting the application of respondent No.2 has taken into consideration the report supplied by the Field Agency. The order passed by the Tehsildar (Settlement)-cum-A.C.Ist Grade, Amb was upheld by the Settlement Collector, Kangra. The Settlement Collector had observed that respondent No.2 should have assailed the mutation

No.542 before the competent court of jurisdiction and he was not found in possession of the land according to Tatima of sale and he was in possession of the southern part of Khasra No.732/1. The Divisional Commissioner after perusing of “Aksh Shajra Latha Ishtemal” for the year 1964-65 and the “Aksh Shajra Kistwar Bandobast Haal” and comparing old Khasra No.999/732 and old khasra No.733 vis-à-vis new khasra Nos.1845 and 1847 came to the conclusion that there was nothing to depict the position of entire old khasra No.732. He further concluded that the southern side of Khasra No.999/732 was Khasra No.733. He had taken into consideration the spot inspection conducted by the Patwari, field Kanungo and Naib Tehsildar while rejecting the revision preferred by respondent No.2.

The Financial Commissioner (Appeals) without discussing the evidence has come to a wrong conclusion that the respondent no.2 was in possession over the southern portion of Khasra No.732. He had over looked the spot inspection carried out by Patwari, field Kanungo and the Naib Tehsildar as discussed by the Divisional Commissioner, Kangra Division in his order dated 15.1.1998. The Financial Commissioner (Appeals) has given undue importance to the sale deed without taking into consideration the position existing on the spot as verified by the revenue agencies. The Financial Commissioner (Appeals) has also failed to take into consideration the statement made by the respondent No.2 before the Tehsildar (Settlement)-cum-A.C.Ist Grade, Amb on 14.7.1991. The sale deed is dated 23.9.1969 and the mutation was attested on 20.4.1970 and thereafter necessary corrections were carried out in the jamabandi from time to time. The application has been preferred before the Settlement Officer, Kangra on 31.1.1987 for correction of certain entries. The application was highly belated taking into consideration the mutation and revenue entries made in the Jamabandi which fact had also been

highlighted by the Divisional Commissioner in his order dated 15.1.1998. The delay in filing the application could not be over looked by the Financial Commissioner (Appeals) while disposing of the matter. The Financial Commissioner (Appeals) has committed material irregularity by accepting the revision and setting aside the well reasoned order passed by the Divisional Commissioner, Kangra Division.

Accordingly the writ petition is allowed. Annexure P-4 dated 8.10.2003 is quashed and set aside and the order passed by the Divisional Commissioner, Division Kangra dated 15.1.1998 is upheld. There shall be no order as to costs.

October 10 , 2007 (g) **(Rajiv Sharma), J.**